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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5-29.5 Ghz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service	)	CC Docket No. 92-297

REPLY COMMENTS

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SUMMARY

The Commission's proposal to permit cable cross-ownership of Local Multipoint Distribution Services will best serve the interests of consumers and provide a competitive marketplace for the distribution of a variety of video and non-video services.

Several commenters argue that the 1992 Cable Act's cross-ownership restriction applies to LMDS providers because LMDS will provide predominantly video services and be similar to Multichannel Multipoint Distribution Services. More realistically, LMDS will provide many non-video services. Though LMDS will have the potential of providing video programming, this new technology can also be instrumental in developing a new standard for the delivery of a variety of non-video services. The substantial differences between LMDS and MMDS, such as the ability of LMDS to provide two-way, interactive voice and data links, put LMDS in a position to expand beyond a video-programming marketplace.

Given the differences between LMDS and MMDS, cable cross-ownership of LMDS will not create a competitive problem in the video marketplace, as some commenters assert. LMDS operators

and cable. The Commission has imposed cross-ownership bans only on rare occasions. Though LMDS operators may provide video services, addressing a fictional competitive problem by imposing a cross-ownership restriction would greatly burden an innovative service before it finds a niche in a new marketplace. Further, a cross-ownership restriction coupled with BTA or MSA/RSA size LMDS markets will unjustifiably foreclose cable operators from offering LMDS in significant geographic areas far larger than a cable franchise area.

Various commenters contend that the 1992 Cable Act's cross-ownership ban either prohibits cable operators from holding LMDS licenses, or should be extended to cover the new service. However, the 1992 Cable Act's cross-ownership bans were the product of careful consideration by Congress to address a particular potential competitive problem. These regulations were narrowly tailored to restrict cross-ownership of MDS and SMATV systems, but they were not intended to extend to all delivery systems that are capable of providing video entertainment. Had Congress intended the cross-ownership restriction to be broader, it would have adopted more comprehensive legislation. There is simply no reason to apply cross-ownership rules to cable provision of LMDS.

TABLE OF CONTENTS

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REPLY COMMENTS

Comcast Corporation, Jones Intercable, Inc., and Cablevision Industries Corporation and (collectively "the Parties") by their attorneys, hereby file reply comments in response to the Commission's Notice of Proposed Rulemaking and the comments filed by various parties in this proceeding.[1/] As envisioned by the Commission, LMDS offers an opportunity for the wireless delivery of a broad panoply of services, both video and non-video. The technical characteristics of this new distribution service should be well-suited for handling a variety of offerings and readily adaptable to particular marketplace needs and interests. The range and scope of possible service offerings dictate the need to adopt regulatory policies which will maximize LMDS development.

will provide principally video services.[5/] However, the Commission recognizes in the Notice the broad range of potential services that could be provided with LMDS.[6/]

Based on developmental work to date, the Commission expects that some LMDS licensees initially may choose to provide video entertainment programming.[7/] The Notice observes, however, that this need not be the case; as a practical matter video programming services may not be the first use of LMDS, or even the most viable use of the new distribution system in all geographic areas.[8/] Significantly, the Notice proposes no rule or requirement that LMDS licensees provide video programming at all. The proposed rules merely require that LMDS be available to

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4/ (...continued)
Comments of Virginia Communications, Inc. at 8-9. See discussion at Section II infra.

5/ Other commenters that oppose cable cross-ownership of LMDS seem to suggest the Commission adopt a new cross-ownership rule specifically for LMDS. See, e.g. Comments of Cardiff Broadcasting Group at 3.

6/ Even proponents of LMDS/cable cross-ownership rules appreciate the diverse services that LMDS could provide. See Comments of Rock Hill, Fort Mill and Lancaster Telephone Companies ("Rock Hill et al.") at 3-4; Comments of U S West, Inc. ("USW") at 9; Comments of Competitive Cable Association ("CCA") at 8; Comments of Wireless Cable, Ltd. at 1-2; Comments of WSB at 1-2; Comments of Virginia Communications, Inc. at 1-2.

7/ Subsequent to the issuance of the Notice, Suite 12 Group, an LMDS proponent, reaffirmed its expressed intent to provide non-video services, including Personal Communications Services, using LMDS frequencies. In its comments and reply comments on the Commission's Tentative Decision in General Docket 90-314 awarding several PCS pioneer preference requests, Suite 12 stated its continuing interest in providing competitive non-video services over LMDS, including PCS.

8/ Notice at 563.

90% of the population of the licensing area within three years of licensing.[9/] Thus, the presumption that several commenters adopt, that LMDS will be primarily a video programming provider, is unfounded.

The comments of Video/Phone Systems, Inc., an LMDS technology developer, for example, dispute that video programming is the most likely use of LMDS. Observing that there are several technologies, notably MMDS and DBS that can provide comparable video distribution service to compete with cable, Video/Phone states:

> [t]he market for the telecommunications services [] is much larger and is still at an early stage of development. Furthermore, only the new 28 GHz technology can make available rapidly and ubiquitously two-way, broadband circuits required for telecommunications. . . . . Only wireless systems will be able to meet the need for rapid deployment for local broadband services.[10/]

Video/Phone's comments describe its decision to design a technology with sufficient capacity and reliability to support data and other telecommunications services. Video/Phone urges the Commission to rename the proposed 28 GHz service Local Wireless Broadband Service, to more accurately reflect the nature of the service Video/Phone envisions. Clearly Video/Phone, one

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9/ Notice at 562-3.

10/ Comments of Video/Phone at 5-6, citations omitted.

of a few developers of 28 GHz technologies, does not view LMDS as a pure cable competitor/video programmer.[11/]

Similarly, Suite 12 disputes the Notice's assumption that video programming will be the largest and most commercially significant use of LMDS. Suite 12 states:

> LMDS will develop into a multifunction transport system using various modulation techniques including, but not limited to, FM and digital. In addition to interactive video and data services, Suite 12 believes that LMDS will provide commercially significant telephone company type services that the local exchange carriers cannot offer on a competitive basis. . . . Suite 12 believes that two-way voice and data will be just as important, if not more important, than mere video distribution services.[12/]

Because it is far from certain whether LMDS licensees will ultimately develop into video programmers the Commission correctly concluded that a cross-ownership restriction should not be imposed on cable operators based on the mere potential that some LMDS licensees may choose to provide similar services.[13/]

11/ Video/Phone's comments include a studv entitled "New

B. The Notice Correctly Determined That LMDS And MMDS Differ Substantially.

Though LMDS technology as developed by the service's proponents is capable of providing video programming services like MMDS, the two services differ substantially. As the Notice recognizes, while both LMDS and MMDS utilize a point-to-multipoint microwave radio based network to reach customers, this similarity alone does not justify imposition of a cable/MMDS cross-ownership restriction on LMDS.[14/] There are a striking number of differences between LMDS and MMDS.

Unlike MDS or MMDS, LMDS is designed to be a two-way, interactive service. While the Notice observes that the proposed service meets the generic standards of a multipoint distribution service, the Notice also states:

> due to the novel [LMDS] technology which uses a cellular distribution format and a greatly expanded range of services which can be offered, we find that this service is separate and distinct from other types of multipoint distribution services. Accordingly, we propose . . . new rules suited to the technology and distribution format to be used.[15/]

The Commission is correct in its assessment that LMDS will differ substantially from MDS and MMDS. MDS is "a one-way domestic public radio service rendered on microwave frequencies from a fixed station transmitting (usually in an omnidirectional pattern) to multiple receiving facilities located at fixed

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14/ Notice at 563.

15/ Notice at 558.

points."[16/] That architecture makes MDS particularly well suited to provide certain kinds of services and not others. In purely physical terms, moreover, the services MDS can provide are limited geographically. In contrast, the Commission is proposing that LMDS licensees place numerous transmitters throughout much larger service areas than the protected service areas of MMDS licensees which are typically smaller than a single metropolitan area. Further, the broad based distribution system of LMDS can there is no proposal to preclude local exchange carriers from LMDS eligibility despite the fact that LMDS can and will provide services that compete with telephone company voice and data services. The Commission acknowledges that the services that may be offered on LMDS are likely to be more diverse than those offered by MDS, MMDS, existing cable or other communications systems. There is no basis to foreclose cable participation in LMDS given the Commission's intention to allow a high degree of flexibility by LMDS licensees in selecting their regulatory status and in choosing what services to provide.

C. There Is No Competitive "Problem" That Must Be Addressed by the Drastic Measure of a Cross-Ownership Restriction.

Commenters that oppose cable ownership of an LMDS license assert that a cable cross-ownership restriction is necessary to "prevent anti-competitive activity by cable . . . operators who are or may become involved in video distribution in the [LMDS] licensed area."[17/] They argue that "a principal purpose for the Commission's creation of the LMDS service is to promote competition in the video entertainment marketplace,"[18/] and that "[o]wnership by the sole cable operator in a franchised area of a LMDS license providing video services would stifle

17/ Comments of CTA at ¶ 3. See also Comments of M3 Illinois Telecommunications Corp. at 6; Comments of Cardiff at 3 ("We do not believe that limiting the potential operator base to two already entrenched services [cable and telco] will foster the kind of competition the Commission and Congress desire").

18/ Comments of Wireless Cable, Ltd. at 8.

. . . competition."[19] As discussed below, these comments misunderstand the impact LMDS will have on local telecommunications competition in general and the impact of the 1992 Cable Act on the video marketplace.

These commenters again incorrectly assume that LMDS chiefly will provide some video programming services. Even if LMDS operators do provide some video services it is unlikely that they will restrict their service offerings to only video. As the comments of Suite 12 Group and others illustrate, LMDS operators will undoubtedly open a new marketplace for multi-service providers offering a variety of local telecommunications services. The Parties thus support the position of the Competitive Cable Association ("CCA") which notes that the Commission should "discourage any premature burdening of this new service with excess bars, prohibitions, etc., before it can really tap into market demand and realize its potential."[20]

More importantly, the perceived competitive problem these commenters address simply is not substantiated by the facts. As the Notice recognizes:

> [I]n the video distribution market, LMDS faces competition from MMDS, cable television, low-power television, domestic fixed satellites and broadcast television stations. The telecommunications market includes long-distance telephone service, local exchange service, fixed cellular services, fixed satellite communications,

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19/ Comments of Suite 12 Group at 38.

20/ Comments of CCA at 8.

private carriers, and Personal Communications Systems (PCS).[21]

The cable industry has demonstrated a willingness and a facility for experimentation and innovation both in the types of services offered and in achieving technological breakthroughs.

Under these circumstances, precluding cable's participation in the LMDS business would make little sense even if one assumed that LMDS was to be primarily a video distribution service;[25/] there is no rational basis for a cross-ownership prohibition when the potential of LMDS is far broader in scope.

Moreover, the recently adopted "Cable Television areas located outside of their cable franchise areas but within the same BTA.

Even the Cable Act's MMDS cross-ownership prohibition permits waivers to ensure provision of video programming throughout a franchise area. An LMDS cross-ownership rule would operate to preclude cable participation even outside the franchise area. Contrary to the Commission's policies of narrowly tailoring restrictions on competition, a cross-ownership rule would prohibit operators from operating LMDS stations far beyond their cable franchise area boundaries.

The over broad application of a cross-ownership rule in BTA sized markets is not effectively addressed by the suggestion by several commenters to license LMDS with MSA/RSA market areas. Typically there are a large number of cable franchises operating within any MSA or RSA and any cross-ownership rule will preclude many cable companies from participation in LMDS despite their lack of presence throughout an MSA or RSA.

II. THE CONGRESSIONAL BAN ON THE CROSS-OWNERSHIP OF MMDS AND SMATV STATIONS IS NOT APPLICABLE TO LMDS.

Several commenters that oppose cable ownership of LMDS argue that the 1992 Act prohibits cable operators from holding LMDS licenses.[28/] Other commenters that oppose cable cross-ownership admit that the 1992 Act does not cover LMDS and should

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28/ *See* Comments of Sprint at 11; Comments of GTE at 10.

be "extended to LMDS licenses."[29/] These arguments, however, are unsupported by the 1992 Act's legislative history.

In adopting the 1992 Cable Act's cross-ownership ban, Congress focused specifically on cable cross-ownership of SMATV and MMDS services, but did not proscribe ownership of a service such as LMDS. Congress was intent on promoting the existing delivery systems of wireless cable and SMATV as a "competitive force in the multichannel video distribution marketplace"[30/] --

LMDS. If the Commission determines that the cable television industry is to be excluded from participating in LMDS then others who deliver video services and telecommunications services should be excluded as well because the services they provide could also be delivered via LMDS. Taking such action, however, would be contrary to development of a robust and competitive marketplace for innovative communications services.

III. CONCLUSION

The Commission correctly concluded that there is no basis to impose cross-ownership restrictions on cable and LMDS. Though several commenters argue that the cross-ownership ban in the 1992 Cable Act should apply to LMDS, they present no compelling reason requiring its application. LMDS will not provide simply video programming services and LMDS technology differs substantially from MMDS. Finally, the 1992 Cable Act's provision was specifically tailored to address perceived anti-competitive behavior by cable operators, and participation by cable in new services such as LMDS was not specifically prohibited. In the rapidly changing technological environment and with the growing number of providers of both video and non-video services, the public interest is best served by enabling

[illegible]